

# INDEX

	Page
I. Summary Statement of Matter Involved .....	1
II. Jurisdiction .....	3
III. Questions Presented .....	4
IV. Reasons Relied on for Allowance of Writ .....	4
Brief In Support of Petition for Writ of Certiorari .....	6
Opinion of Circuit Court .....	6
Statement of the Case .....	6
Jurisdiction .....	6
Statement of Errors .....	6
Argument .....	7
Argument I. Under the Allegations of the Defendant's Answer and Amended Answer the Certificate of Air- worthiness Issued Upon the Defendant's Plane By the Utah State Aeronautics Commission Meets the Require- ments of the Federal Civil Aeronautics Act of 1938 and the Rules Promulgated Thereunder .....	7
Argument II. The Act and Regulations Under Which Judgment Was Rendered Against the Defendant Are In Violation of the Tenth Amendment to the Constitution of the United States .....	14
Title VI, Civil Aeronautics Act of 1938 .....	2, 3
Sec. 610 (a) (Public No. 706) .....	7, 22
Sec. 603 (c) .....	8
Civil Air Regulations and Air Traffic Rules as Amended to May 31, 1938, Para. 60.31 (a) .....	2, 3, 8
Record 19-22 .....	3
Record 17-22 .....	6
Crawford, on Statutory Construction, Para. 262 .....	9, 11
Section 7, Chapter 12, Laws of Utah, 1939 .....	1
Section 7, Chapter 10, Laws of Utah, 1937, as Amended by Chapter 12, Laws of Utah, 1939 .....	10

# INDEX — (Continued)

	Page
Section 8, Article I, Constitution of the U. S. ....	15
Judicial Code, Sec. 240, Amended; 28 U.S.C.A. 347 .....	4, 6
131 Fed. (2d) 932 .....	6
52 Stat. 977 .....	7
499 U.S.C.A. 403 (3) .....	7

## CASES CITED:

A. L. A. Schechter Poultry Corp. vs. United States, 295 U. S. 495, 546, 79 L. Ed. 1570, 1588, 55 S. Ct. 837, 97 A. L. R. 947 .....	20
Bolles vs. Outing Company, 175 U. S. 262 .....	12
Ex Parte Webb, 225 U. S. 663 .....	12
Harrison vs. Vose, 9 How. 372 .....	12
Howard vs. Illinois Central Railroad Co., 207 U. S. 463 .....	19
Lewisville N. O. & T. R. Co. vs. Mississippi, 133 U. S. 587 .....	19
Milnor vs. New Jersey Railroad & Transportation Co., 3 Wall 782 .....	19
Mondou vs. New York, N. H. & H. R. Co., 223 U. S. 1 .....	19
National Labor Relations Board vs. Jones and Laughlin Steel Corporation, 301 U. S. 1, 81 L. Ed. 893 .....	16
Ratterman vs. Western Union Telegraph Co., 127 U. S. 411.....	16
Santa Cruz Fruit Packing Co. vs. National Labor Relations Board, 303 U. S. 453, 82 L. Ed. 955 .....	19
Shipp vs. Miller, 2 Wheat 316 .....	12
Telephone Company vs. Texas, 105 U. S. 460 .....	16
United States vs. DeWitt, 9 Wall 41 .....	19
United States vs. Sheldon, 2 Wheat 119 .....	12

# SUPREME COURT OF THE UNITED STATES

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CORT A. ROSENHAN, PETITIONER

vs.

UNITED STATES OF AMERICA

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## Petition for Writ of Certiorari

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TO THE HONORABLE THE CHIEF JUSTICE AND  
THE ASSOCIATE JUSTICES OF THE SUPREME  
COURT OF THE UNITED STATES:

The Petition of Cort A. Rosenhan, a citizen of the State  
of Utah, respectfully shows to this Honorable Court:

### I.

#### SUMMARY STATEMENT OF MATTER INVOLVED

The Petitioner, Cort A. Rosenhan, who is an amateur  
airplane builder, constructed a plane of his own, upon  
which a certificate of airworthiness was granted by the  
Aeronautics Commission of the State of Utah under author-  
ity of Section 7, Chapter 12, Laws of Utah, 1939. Rosenhan

applied for a certificate of airworthiness to the Civil Aeronautics Commission of the United States Government but the Commission refused even to examine his craft to determine whether or not it was eligible for a certificate. Rosenhan, nevertheless, flew his craft within a civil airway designated by the Civil Aeronautics Authority in Section 60.2001 of the Air Traffic Rules as amended to May 31, 1938, which air lane extends ten miles on each side of a center line running generally east and west through the State of Utah and passing through Salt Lake City. At no time did Rosenhan cross the borders of the State of Utah, nor did he at any time, so far as the pleadings indicate, come in contact with or in any way affect any craft operating in interstate commerce.

Rosenhan was then charged by complaint of the United States of America, filed in the United States District Court for the District of Utah, Central Division, with violation of Title VI of the Civil Aeronautics Act of 1938 and paragraph 60.31 (a) of the Civil Air Regulations and Air Traffic Rules as amended to May 31, 1938.

Rosenhan filed an answer and an amended answer in which he admitted flying the plane within the civil airway as alleged by the Government, but alleging that he had operated entirely within the borders of the State of Utah, and also setting up the fact that his craft had been granted an airworthiness certificate by the Utah State Aeronautics Commission. In addition he alleged that the Act and regulations under which he was charged were unconstitutional in that they were in violation of the Tenth Amendment to the Constitution of the United States for certain reasons set out in the Answer. The Government made a motion for judgment on the pleadings which was granted,

thus giving the Defendant Rosenhan no opportunity to sustain his allegations by the introduction of evidence.

An appeal from the judgment of the District Court was taken by Rosenhan to the United States Circuit Court of Appeals for the Tenth Circuit, in which appeal your Petitioner, the Defendant therein, sought to reverse the judgment of the District Court for the reasons that:

(a) The motion for judgment on the pleadings admitted for the purpose of such motion the truth of all allegations in the Defendant's Answer.

(b) Under such allegations the certificate of airworthiness issued upon the Defendant's plane by the Utah State Aeronautics Commission meets the requirements of Title VI of the Civil Aeronautics Act of 1938 and paragraph 60.31 (a) of the Civil Air Regulations and Traffic Rules as amended to May 31, 1938.

(c) Under such allegations the act under which the Defendant was convicted is in violation of the Tenth Amendment to the Constitution of the United States of America.

The United States Circuit Court of Appeals for the Tenth Circuit rendered an opinion affirming the judgment of the United States District Court.

## II.

### JURISDICTION

1. The opinion of the Circuit Court of Appeals affirming the judgment of the District Court was filed on the 16th day of November, 1942. (Record, 19-22.)

2. The Petition is for a Writ of Certiorari to review a decision of the United States Circuit Court of Appeals for the Tenth Circuit. (Judicial Code, Section 240, Amended: 28 U.S.C.A. 347.)

3. The entire record is before this Honorable Court on this Petition for Writ of Certiorari which is made within the time limit prescribed by statute and the rules of this Court.

### III.

#### QUESTIONS PRESENTED

The questions presented in the action sought to be reviewed are:

(a) Whether or not under the pleadings in the case the Defendant in the Court below violated the requirements of Title VI, of the Civil Aeronautics Act of 1938 and paragraph 60.31 (a) of the Civil Air Regulations and Traffic Rules, as amended to May 31, 1938.

(b) Whether, under the allegations of the pleadings, the Act under which judgment was rendered against the Defendant and the rules promulgated thereunder, are in violation of the Tenth Amendment to the Constitution of the United States.

### IV.

#### REASONS RELIED ON FOR ALLOWANCE OF WRIT

Petitioner respectfully urges that this Court should grant the Writ of Certiorari to review the decision of the Circuit Court for the reason that (a) such Court has

decided an important question of federal law which has not been, but should be, settled by this Court, namely, the question as to the extent of the powers of the federal government to regulate intra-state air commerce; and (b) that the decision of the Circuit Court goes far beyond, and is in conflict with, applicable decisions of this Court relating to the powers of the federal government to regulate commerce.

CORT A. ROSENHAN,  
*Petitioner.*

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*Attorneys for Petitioner*